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HOUSE BILL 82

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO LABOR; INCREASING THE MINIMUM WAGE FOR ALL
EMPLOYEES IN PHASES; PROVIDING FOR AN ANNUAL COST-OF-LIVING
INCREASE IN THAT MINIMUM WAGE RATE BEGINNING IN 2025; REPEALING
SECTION 50-4-23 NMSA 1978 (BEING LAWS 1967, CHAPTER 242,
SECTION 1, AS AMENDED), WHICH PROVIDES FOR REDUCED MINIMUM
WAGES FOR PERSONS WITH DISABILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
Chapter 200, Section 2, as amended by Laws 2019, Chapter 114,
Section 1 and by Laws 2019, Chapter 242, Section 2) is amended
to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

- A. "employ" includes suffer or permit to work;
- B. "employer" includes any individual, partnership,

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1 association, corporation, business trust, legal representative
2 or organized group of persons employing one or more employees
3 at any one time, acting directly or indirectly in the interest
4 of an employer in relation to an employee, but shall not
5 include the United States, the state or any political
6 subdivision of the state; provided, however, that for the
7 purposes of Subsection A of Section 50-4-22 NMSA 1978,
8 "employer" includes the state or any political subdivision of
9 the state; and

10 C. "employee" includes an individual employed by an
11 employer, but shall not include:

12 (1) an individual employed in a bona fide
13 executive, administrative or professional capacity and
14 forepersons, superintendents and supervisors;

15 (2) an individual employed by the United
16 States, the state or any political subdivision of the state;
17 provided, however, that for the purposes of Subsection A of
18 Section 50-4-22 NMSA 1978, "employee" includes an individual
19 employed by the state or any political subdivision of the
20 state;

21 (3) an individual engaged in the activities of
22 an educational, charitable, religious or nonprofit organization
23 where the employer-employee relationship does not, in fact,
24 exist or where the services rendered to such organizations are
25 on a voluntary basis. The employer-employee relationship shall

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1 not be deemed to exist with respect to an individual being
2 served for purposes of rehabilitation by a charitable or
3 nonprofit organization, notwithstanding the payment to the
4 individual of a stipend based upon the value of the work
5 performed by the individual;

6 (4) salespersons or employees compensated upon
7 piecework, flat rate schedules or commission basis;

8 (5) registered apprentices and learners
9 otherwise provided by law;

10 [~~(6) persons eighteen years of age or under~~
11 ~~who are not students in a primary, secondary, vocational or~~
12 ~~training school;~~]

13 [~~(7)~~] (6) G.I. bill trainees while under
14 training;

15 [~~(8)~~] (7) seasonal employees of an employer
16 obtaining and holding a valid certificate issued annually by
17 the director of the labor relations division of the workforce
18 solutions department. The certificate shall state the job
19 designations and total number of employees to be exempted. In
20 approving or disapproving an application for a certificate of
21 exemption, the director shall consider the following:

22 (a) whether such employment shall be at
23 an educational, charitable or religious youth camp or retreat;

24 (b) that such employment will be of a
25 temporary nature;

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1 (c) that the individual will be
2 furnished room and board in connection with such employment, or
3 if the camp or retreat is a day camp or retreat, the individual
4 will be furnished board in connection with such employment;

5 (d) the purposes for which the camp or
6 retreat is operated;

7 (e) the job classifications for the
8 positions to be exempted; and

9 (f) any other factors that the director
10 deems necessary to consider;

11 [~~(9)~~] (8) any employee employed in
12 agriculture:

13 (a) if the employee is employed by an
14 employer who did not, during any calendar quarter during the
15 preceding calendar year, use more than five hundred person-days
16 of agricultural labor;

17 (b) if the employee is the parent,
18 spouse, child or other member of the employer's immediate
19 family; for the purpose of this subsection, the employer shall
20 include the principal stockholder of a family corporation;

21 (c) if the employee: 1) is employed as
22 a hand-harvest laborer and is paid on a piece-rate basis in an
23 operation that has been, and is customarily and generally
24 recognized as having been, paid on a piece-rate basis in the
25 region of employment; 2) commutes daily from the employee's

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1 permanent residence to the farm on which the employee is so
2 employed; and 3) has been employed in agriculture less than
3 thirteen weeks during the preceding calendar year;

4 (d) if the employee, other than an
5 employee described in Subparagraph (c) of this paragraph: 1)
6 is sixteen years of age or under and is employed as a hand-
7 harvest laborer, is paid on a piece-rate basis in an operation
8 that has been, and is generally recognized as having been, paid
9 on a piece-rate basis in the region of employment; 2) is
10 employed on the same farm as the employee's parent or person
11 standing in the place of the parent; and 3) is paid at the same
12 piece-rate as employees over age sixteen are paid on the same
13 farm; or

14 (e) if the employee is principally
15 engaged in the range production of livestock or in milk
16 production;

17 [~~(9)~~] (9) an employee engaged in the
18 handling, drying, packing, packaging, processing, freezing or
19 canning of any agricultural or horticultural commodity in its
20 unmanufactured state; or

21 [~~(11)~~] (10) employees of charitable, religious
22 or nonprofit organizations who reside on the premises of group
23 homes operated by such charitable, religious or nonprofit
24 organizations for persons who have a mental, emotional or
25 developmental disability."

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1 SECTION 2. Section 50-4-22 NMSA 1978 (being Laws 1955,
2 Chapter 200, Section 3, as amended) is amended to read:

3 "50-4-22. MINIMUM WAGES.--

4 A. ~~[Except as provided in Subsection B or D of this~~
5 ~~section]~~ An employer shall pay to an employee a minimum wage
6 rate of:

7 (1) prior to January 1, 2020, at least seven
8 dollars fifty cents (\$7.50) an hour;

9 (2) beginning January 1, 2020 and prior to
10 January 1, 2021, at least nine dollars (\$9.00) an hour;

11 (3) beginning January 1, 2021 and prior to
12 January 1, 2022, at least ten dollars fifty cents (\$10.50) an
13 hour;

14 (4) beginning January 1, 2022 and prior to
15 January 1, [2023] 2024, at least ~~[eleven dollars fifty cents~~
16 ~~(\$11.50)]~~ twelve dollars (\$12.00) an hour; and

17 (5) ~~[on and after January 1, 2023]~~ beginning
18 January 1, 2024 and prior to January 1, 2025, at least ~~[twelve~~
19 ~~dollars (\$12.00)]~~ fifteen dollars (\$15.00) an hour.

20 ~~[B. On and after January 1, 2020, an employer who~~
21 ~~employs a student regularly enrolled in secondary school to~~
22 ~~work after school hours or when school is not in session shall~~
23 ~~pay the student a minimum wage rate of at least eight dollars~~
24 ~~fifty cents (\$8.50) an hour unless the student is employed~~
25 ~~pursuant to Subsection D of this section, in which case the~~

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1 ~~provisions of that subsection shall apply to the student. In~~
2 ~~each case, the employer shall follow the provisions of the~~
3 ~~Child Labor Act, and Subsection E of this section shall not~~
4 ~~apply to the student.]~~

5 B. On or after January 1, 2025 and on January 1 of
6 each successive year, the minimum wage rate shall be increased
7 by the increase in the cost of living. The increase in the
8 cost of living shall be measured by the percentage increase of
9 the previous year of the consumer price index for all urban
10 consumers, United States city average for all items, or its
11 successor index, as published by the United States department
12 of labor or its successor agency, with the amount of the
13 minimum wage increase rounded to the nearest multiple of five
14 cents (\$.05); however, the minimum wage shall not be adjusted
15 downward as a result of a decrease in the cost of living.

16 C. An employer furnishing food, utilities, supplies
17 or housing to an employee who is engaged in agriculture may
18 deduct the reasonable value of such furnished items from any
19 wages due to the employee.

20 ~~[D. An employee who customarily and regularly~~
21 ~~receives more than thirty dollars (\$30.00) a month in tips~~
22 ~~shall be paid a minimum hourly wage as follows:~~

23 ~~(1) prior to January 1, 2020, at least two~~
24 ~~dollars thirteen cents (\$2.13) an hour;~~

25 ~~(2) beginning January 1, 2020 and prior to~~

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1 ~~January 1, 2021, at least two dollars thirty-five cents (\$2.35)~~
2 ~~an hour;~~

3 ~~(3) beginning January 1, 2021 and prior to~~
4 ~~January 1, 2022, at least two dollars fifty-five cents (\$2.55)~~
5 ~~an hour;~~

6 ~~(4) beginning January 1, 2022 and prior to~~
7 ~~January 1, 2023, at least two dollars eighty cents (\$2.80) an~~
8 ~~hour;~~

9 ~~(5) on and after January 1, 2023, at least~~
10 ~~three dollars (\$3.00) an hour; and~~

11 ~~(6) the employer may consider tips as part of~~
12 ~~wages, but the tips combined with the employer's cash wage~~
13 ~~shall not equal less than the minimum wage rate as provided in~~
14 ~~Subsection A of this section. All tips received by such~~
15 ~~employees shall be retained by the employee, except that~~
16 ~~nothing in this section shall prohibit the pooling of tips~~
17 ~~among wait staff.~~

18 ~~E.]~~ D. An employee shall not be required to work
19 more than forty hours in any week of seven days, unless the
20 employee is paid one and one-half times the employee's regular
21 hourly rate of pay for all hours worked in excess of forty
22 hours. For an employee who is paid a fixed salary for
23 fluctuating hours and who is employed by an employer a majority
24 of whose business in New Mexico consists of providing
25 investigative services to the federal government, the hourly

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1 rate may be calculated in accordance with the provisions of the
2 federal Fair Labor Standards Act of 1938 and the regulations
3 pursuant to that act; provided that in no case shall the hourly
4 rate be less than the federal minimum wage."

5 SECTION 3. REPEAL.--Section 50-4-23 NMSA 1978 (being Laws
6 1967, Chapter 242, Section 1, as amended) is repealed.

7 SECTION 4. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2020.

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